> The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on May 6, 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

As Applicant explained to Examiner Rowan during a teleconference on November 25, 2002, Applicant has already filed a corrected for Figure 3 on May 6, 2002. Applicant asked Examiner Rowan for clarification about what was intended by the Examiner's further request for "proper drawing correction or corrected drawings." Examiner Rowan told Applicant during the teleconference to disregard this request for now, and that the Examiner would contact Applicant if further action were required on the part of Applicant in regard to the request for "proper drawing correction or corrected drawings." Consequently, with this Response, Applicant is not providing any further drawing amendments and will await word from the Examiner and any further action required on the part of Applicant in regard to the drawings. The foregoing comments are believed to adequately address the Examiner's comments about the drawings.

Claim Rejection Under 35 U.S.C. §102(e) Based upon The Thibodeaux Patent

In the Office Action, the Examiner rejected claims 1-2, 7-9, and 24-27 as allegedly being anticipated by U.S. Patent No. 6,185,860 to Thibodeaux (subsequently referred to "Thibodeaux patent"). In support of this rejection, the Examiner stated:

> The patent to Thibodeaux shows an ice fishing storage apparatus having a pair of extendable elongate shells 12, 13, 14 having an interior surface that defines and elongate cavity. The shells are located adjacent to each other. The top portion 5 of the container acts as a spacing structure and secures the extendable elongate shells in a predetermined relation to each other.

Despite the Examiner's comments, the Thibodeaux patent does not fully disclose each and every feature that is required by claims 1-2, 7-9, and 24-27. Consequently, the Thibodeaux patent does not anticipate any of claims 1-2, 7-9, or 24-27.

The comments of the Examiner demonstrate the Examiner is characterizing the top portion 5 of the Thibodeaux fisherman's cooler as a spacing structure. Furthermore, the Examiner

characterizes the elements 12, 13, and 14, collectively, as an extendable elongate shell "having an interior surface that defines an elongate cavity". The Examiner further surmises that the pair of alleged extendable elongate shells are "located adjacent to each other." However, the Examiner's characterization of the Thibodeaux fisherman's cooler is erroneous in several respects.

Claim 1 of the above-identified application reads as follows:

> *1. An ice fishing tackle storage apparatus, the apparatus comprising:*
>
> *a pair of extendable elongate shells, the extendable elongate shells having an interior surface that defines an elongate cavity, the pair of extendable elongate shells located adjacent to each other, and ice fishing tackle capable of being positioned within the elongate cavity of each extendable elongate shell; and*
>
> *a spacing structure, the pair of extendable elongate shells each secured by the spacing structure, the spacing structure effective to maintain the pair of extendable elongate shells in predetermined relation to each other, proximate the spacing structure.*

As noted, the Examiner's characterization of the Thibodeaux fisherman's cooler is erroneous in several respects. First, referring to Figure 4 and to column 2, lines 35-49, of the Thibodeaux patent, it is clear the elements 12, 13, and 14 do not amount to an elongate shell, as alleged by the Examiner. Instead, the elements 12 in the fishing rod holder 10 constitute a plurality of concentric cup members 12 of varying diameter. Next, the element 13 is a longitudinal U-shaped groove in each of the concentric cup members 12. Finally, the element 14 is a U-shaped protrusion that appears on the outer surface of each concentric cup member 12.

Next, the Examiner alleges the cup members 12 collectively have an interior surface that defines an elongate cavity. This is an erroneous conclusion, since the concentric cup members 12 are in fact simply cups, where the bottom of each cup *prevents* "adjacent' cups from collectively defining an elongate cavity. Essentially, the different cup members 12 each have a varying diameter so that cups with a smaller diameter may nest in cups having a smaller diameter. This allows fisherman to remove those cup members 12 having a diameter smaller than the diameter of the rod desired to be held in the fishing rod holder 10. (See lines 35-37 in Col. 2 of the Thibodeaux patent).

Thus, despite the Examiner's characterization, Figure 4 of the Thibodeaux patent does not disclose an extendable series of members that collectively define an extendable elongate cavity. Instead, the depiction of the cup members 12 with varying diameters in Figure 4 simply shows the relationship of the inner diameter to the outer diameter of adjacent cup members 12. Indeed, viewing the fishing rod holders 10 that are depicted in Figure 1 and cup members 12 in Figure 4, it is clear the height of the cup members 12 decreases from the cup with the largest diameter to the cup with the smallest diameter (to accommodate the thickness of the cup bottoms of each cup member 12) such that the cup members 12, when nested, do not extend above each other.

Nonetheless, even in light of these detailed comments about the cup members 12 of the Thibodeaux fishermen's cooler that have been presented in response to prior Office Actions, the Examiner responded to those prior comments with the following allegation in a prior Office Action:

> However, Fig. 4 clearly shows an extendable series of members that define an extendable elongate cavity.

The Examiner may want Figure 4 to disclose such details, but the Thibodeaux patent, such as in Figure 4, does not in fact show "an extendable series of members that define an extendable elongate cavity," as explained in exhaustive detail in the previous three paragraphs of this Response. The above-recited statement of the Examiner disregards the details that are provided in the Thibodeaux patent, while attempting to supplement the Thibodeaux patent with additional details that simply do not exist in the Thibodeaux patent.

The foregoing comments demonstrate the Thibodeaux patent does not in fact disclose either of the extendable elongate shells with the interior surface that defines an elongate cavity, as required by claim 1. Furthermore, Applicant notes the fishing rod holders 10 are in fact based far apart from each other at corners of the top surface 5, as in Figure 1 of the Thibodeaux patent. Thus, despite the Examiner's allegation, the fishing rod holders 10 of the Thibodeaux device are not located adjacent to each other, as claim 1 requires. Therefore, it is clear the Thibodeaux patent does not disclose the pair of extendable elongate shells that are located adjacent to each other, as required by claim 1.

Next, claim 2, which depends from claim 1, reads as follows:

> *2. The ice fishing tackle storage apparatus of claim 1 wherein the spacing structure comprises a first template, the first template comprising a plurality of interior surfaces, the interior surfaces defining a plurality of apertures that extend through the first template, each extendable elongate shell passing through one of the apertures of the first template.*

Claim 2 thus requires a first template, where interior surfaces of the first template define "a plurality of apertures that extend through the first template." Furthermore, claim 2 requires that each extendable elongate shell pass must "through one of the apertures of the first template."

The Thibodeaux patent describes a bore that receives the cup member 12 with the largest outside diameter. (Col. 2, lines 46-49). The bore is not depicted in any of the figures of the Thibodeaux patent. Thus, the Thibodeaux patent does not disclose anything about the bore extending through the top portion 5. Rather, all we know is that the cup members 12 rest in this bore. Furthermore, the Thibodeaux does not say anything about there being a friction fit between the largest diameter cup member 12 and the bore. Additionally, it is noted that the cup members 12 do not include any type of lip that would prevent the cup members 12, such as the largest diameter cup member 12, from slipping through the bore. Consequently, it is clear the bore does not extend through the top surface 5, but instead apparently has a bottom surface that supports the cup members 12 and prevents the cup members 12 from falling through the bore.

Nonetheless, despite the comments of the previous paragraph that were submitted in response to a prior Office Action, the Examiner, in a prior Office Action, has alleged::

> The cups of Thidodeaux can be considered as tubes that are male an [sic] female noting Fig. 4.

This allegation of the Examiner is not supported by the facts of the Thibodeaux patent. Applicant notes the Thibodeaux patent itself defines the cup members 12 in terms of "cup" terminology. Merriam Webster's Collegiate Dictionary defines a "cup" as "an open usu. bowl-shaped drinking vessel" and as "a drinking vessel and its contents." See Exhibit D of Amendment After Final filed on May 6, 2002: Page 283, 10th ed. (Merriam-Webster, Incorporated 1993). These definitions of "cup," as well as the available disclosure from the Thibodeaux patent, are entirely inconsistent and

non-supportive of the Examiner's contention that the cups of the Thibodeaux patent "can be considered as tubes." The Examiner's allegations turn the definition of cup on its head. Clearly, the Examiner allegations are an improper attempt to elicit details from the Thibodeaux patent that simply are not present in the Thibodeaux patent.

The foregoing comments demonstrate the Thibodeaux fisherman's cooler does not include a "plurality of apertures that extend through the first template" as required by claim 2. Furthermore, it is clear the cup members 12 do not pass through the bore of the Thibodeaux fisherman cooler. Consequently, the Thibodeaux patent does not disclose the required detail of claim 2 about "each extendable elongate shell passing through one of the apertures of the first template." Consequently, the Thibodeaux patent does not disclose each and every feature that is required by claim 2.

Claim 8 of the above-identified application depends from claim 7, where claim depends from independent claim 1. Claim 8 reads as follows:

> *8. The ice fishing tackle storage apparatus of claim 7 wherein the female elongate shell and the male elongate shell are each tubes.*

Claim 8 thus requires that at least one of the extendable elongate shells defined in claim 1 comprises a female elongate shell and a male elongate shell, as defined in claim 7. Claim 8 further requires that the female elongate shell and the male elongate shell each be tubes.

The Thibodeaux patent discloses cup members 12. These cup members 12 do not constitute tubes, since the cups instead have bottoms, as explained above, and, as characterized in the Thibodeaux patent, are cups. Consequently, it is clear the Thibodeaux patent does not disclose the female elongate shell and the male elongate shell as tubes, in accordance with claim 8. Consequently, the Thibodeaux patent does not disclose the invention of the above-identified application, as defined in claim 8.

Claim 24 of the above-identified application, which depends from independent claim 1, reads as follows:

> *24. The ice fishing tackle storage apparatus of claim 1 wherein the pair of extendable elongate shells comprise:*
>
> *a first extendable elongate shell having a first interior surface that defines a first elongate cavity, the first extendable elongate shell comprising a plurality of separable elongate shell components, each elongate shell component having an inner surface that defines an elongate cavity portion, the elongate cavity portions of each adjacent elongate shell component in communication with each other and the elongate cavity portions collectively forming the first elongate cavity; and*
>
> *a second extendable elongate shell having a second interior surface that defines a second elongate cavity.*

Thus, claim 24 requires, for the first extendable elongate shell, that the "elongate cavity portions of each adjacent elongate shell component [be] in communication with each other and the elongate cavity portions collectively forming the first elongate cavity." The Thibodeaux patent does not disclose this aspect of claim 24 for reasons analogous to those provided above with respect to claim 1 and claim 2. Specifically, the Thibodeaux patent discloses nested cup members 12, but does not disclose anything about these cups having elongate cavities that are in communication with each other.

Next, claim 25 depends from independent claim 1 reads as follows:

> *25. The ice fishing tackle storage apparatus of claim 1 wherein each elongate cavity is selectively and reversibly capable of being lengthened or shortened.*

The Thibodeaux patent does not disclose any ability to selectively lengthen or shorten the elongate cavity of either of the pair of extendable elongate shells of claim 1 in accordance with claim 25. In connection with the Examiner's rejection of claims 27-29 under 35 U.S.C. §103(a) based upon the Thibodeaux patent that is discussed subsequently, the Examiner alleges the Thibodeaux patent "shows a stop 13-14" and that it would allegedly "have been obvious to employ an adjustable stop." However, as discussed above, the element 13 is a longitudinal U-shaped groove, while the element

14 is a U-shaped protrusion. (Figure 4 and column 2, lines 35-49, of the Thibodeaux patent). These U-shaped grooves 13 and associated U-shaped protrusions 14 are not stops and are not characterized in the Thibodeaux patent as stops. Furthermore, the Thibodeaux patent does not characterize the element 13 and/or the element 14 as cooperating in a way that supports the Examiner's apparent allegation about the elements 13, 14 serving as a mechanism for allowing selective elongation of the non-existent communicative cavities of the different cup members 12. Rather, as mentioned in the Thibodeaux patent, the U-shaped grooves 13 and associated U-shaped protrusions 14 simply prevent "each cup member from rotating relative to the others." (Col. 2, lines 41-46).

As discussed above, the Thibodeaux patent does not disclose the details required by claims 1, 2, 8, 24, and 25. Consequently, the Thibodeaux patent does not anticipate any of claims 1, 2, 8, 24, or 25, and claims 1, 2, 8, 24, and 25 are therefore each believed allowable. Furthermore, claims 7, 9, 26, and 27 each depend from allowable claim 1 and therefore are also believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of claims 1-2, 7-9, and 24-27 under U.S.C. §102 based upon the Thibodeaux patent and that claims 1-2, 7-9, and 24-27 be allowed.

Claim Rejections Under 35 U.S.C. §102(b) Based Upon The Wolniak Patent.

In the Office Action, the Examiner rejected claims 10-15, 17-18, 30-34, and 37-38 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 4,827,658 to Wolniak (subsequently referred to as the "Wolniak patent"). In support of this rejection, the Examiner stated:

> The patent to Wolniak shows an ice fishing and fishing storage device. In reference to claims 10, 30-34, Wolniak shows a pair of elongate shells 30, 30a, each having an interior surface that defines an elongate cavity that ice fishing tackle is capable of being positioned within. Wolniak shows a first spacing component or template 26 having a plurality of interior surfaces that define a plurality of apertures 22 and a second spacing component 21 in Fig. 2. In reference to claim 11, Wolniak shows the ice fishing tackle storage apparatus positioned in a container 10 that has an end wall 12 with in interior surface. The first spacing component is in contact with the interior surface of the wall as shown in Fig. 1. In reference to claim

> 12, Wolniak shows the second spacing component 21 in contact with the interior surface of the wall 11. Wolniak shows apertures or holes 23 in the bottom wall of the container which also can be considered as sockets which are joined to the elongate shells.

Despite these comments of the Examiner, the Wolniak patent does not disclose each and every feature that is required by any of claims 10-15, 17-18, 30-34, or 37-38. Consequently, the Wolniak patent does not anticipate any of claims 10-15, 17-18; 30-34, or 37-38.

Claim 10 of the above-identified application reads as follows:

> *10. (Amended) An ice fishing tackle storage apparatus, the apparatus comprising:*
>
> *a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity, at least one of the elongate cavities having a length that is adequate to accept a portion of an ice fishing rod within the at least one elongate cavity, the ice fishing rod having a tip and a handle, a reel or a line windup attached to the ice fishing rod proximate the handle, the portion of the ice fishing rod extending from a tip of the ice fishing rod to the reel or line windup;*
>
> *a first spacing component, the pair of elongate shells each secured by the first spacing component; and*
>
> *a second spacing component, at least one of the elongate shells secured by the second spacing component, the second spacing component spaced apart from the first spacing component.*

Claim 10 thus requires a pair of elongate shells that each define elongate cavities. Claim 10 further requires that at least one of the elongate cavities have a length adequate to accept a portion of an ice fishing rod, where the portion is defined as "extending from a tip of the ice fishing rod to the reel or line windup." Thus, at least one of the elongate cavities is required by claim 10 to be long enough to accept most of an ice fishing rod.

The Wolniak patent discloses a fishing tackle box with vertically disposed display tubes 30. However, these tubes 30 fit within what is depicted as a conventional fishing tackle box with a top that closes over the tubes. The Wolniak patent is purely concerned with storage of artificial fishing lures in the individual tubes 30. (Col. 1, lines 7-17; col. 3, line 59 through col. 4,

line 10; and Figure 3). Indeed, the Wolniak patent further discloses that the cover portions 20*a* and 20*b* cover the upper ends of the tubes 30 to prevent the lures from falling out of the individual tubes 30 in the event the tackle box is overturned. (Col. 4, lines 26-44; and Figure 1). There is clearly no disclosure in the Wolniak patent about the tubes 30 having a length that is capable of accepting the majority of an ice fishing rod. Indeed, the covers 20*a* and 20*b* would not allow storage of an ice fishing rod in the tubes 30, since the reel or line windup parts of the rods and handle portions of the rod opposite the tip of the rod, which each may permissibly extend outside (or above) the elongate cavity of a particular elongate shell, would prevent the cover portions 20*a* and 20*b* from being closed.

Furthermore, as mentioned above, the tubes 30 are intended solely for storing fishing lures. There is no disclosure in the Wolniak patent about the tubes 30 having a length long enough to accommodate a portion of an ice fishing rod extending from the tip of the ice fishing rod to the reel or line windup, as required by claim 10. Thus, the Wolniak patent does not disclose each and every feature that is required by claim 10.

Claim 14 depends from independent claim 10 and reads as follows:

> *14. (Amended) The ice fishing tackle storage apparatus of claim 10 wherein the ice fishing tackle storage apparatus is positioned in a container, the container having a wall, the wall comprising one or more interior surfaces that define a recess in the wall or an aperture through the wall, the second spacing component comprising the recess or the aperture, one of the elongate shells passing through the aperture of the wall or positioned in the recess of the wall.*

Claim 14 thus requires a container with a wall, where the wall has interior surfaces that define a recess in the wall or an aperture through the wall. Claim 14 further specifies that one of the elongate shells previously defined in claim 10 passes "through the aperture of the wall" or is "positioned in the recess of the wall."

The Examiner alleges that "Wolniak shows apertures or holes 23 in the bottom wall of the container which also can be considered as sockets that are joined to the elongate shells." The Examiner is correct that the Wolniak patent discloses holes 23 in the bottom wall of the container.

However, the Examiner incorrectly characterizes the holes 23 "as sockets which are joined to the elongate shells."

With regard to the holes 23, the Wolniak patent states:

> The bottom panel 13 is formed with a plurality of holes 23 therethrough which are formed to be positioned within the interior of each one of a plurality of vertically disposed display tubes 30 so that water dripping through the lures can pass out from the tackle box and air can circulate through to dry the lure.

(Col. 3, lines 14-19). This is the only disclosure in the Wolniak patent about the holes 23, other than the depiction of the holes 23 in Figure 1. There is no disclosure whatsoever about any joining of the tubes 30 with the holes 23. Instead, the Wolniak patent merely discloses positioning of an open end of the tubes 30 over the holes 23 to allow drainage of the tubes 30. Clearly, there is no disclosure in the Wolniak patent about a recess in the bottom of the container, where the tubes are positioned *in* the recess, as claim 14 requires. Likewise, there is no disclosure in the Wolniak patent about an aperture in the bottom of the container, where the tubes 30 pass *through* the aperture, as claim 14 requires. Indeed, as seen in Figure 1 of the Wolniak patent, it is clear the diameters of the holes 23 are much smaller than the diameters of the tubes 30.

Undoubtedly, the Wolniak patent does not disclose the recess or the aperture that are required in the alternative by claim 14 or the relationship of the elongate shell to either the aperture or the recess, as required in the alternative by claim 14. Consequently, it is clear the Wolniak patent does not disclose each and every feature required by claim 14.

Claim 15 also depends from independent claim 10 and reads as follows:

> *15. The ice fishing tackle storage apparatus of claim 10 wherein the ice fishing tackle storage apparatus is positioned in a container, the container having a wall, the apparatus further comprising a socket, the socket attached to the wall of the container, and one of the elongate shells positioned in the socket.*

The comments provided above with respect to the hole 23 of the Wolniak patent in the context of the recess or the aperture of claim 14 are equally applicable to the socket that is defined in claim 15.

Claim 15 requires a socket that is attached to the wall of the container, with one of the elongate shells being positioned in the socket. The Examiner's comments about the holes 23 being considered as sockets "which are joined to the elongate shells," is a stretch to the imagination that is not disclosed by the Wolniak patent. Clearly, the Wolniak patent does not disclose the socket or positioning of the elongate shell in the socket as required by claim 15. Therefore, the Wolniak patent does not disclose each and every feature required by claim 15 and consequently does not anticipate claim 15.

Nonetheless, despite the foregoing comments that were submitted in response to the prior Office Action, the Examiner, in a prior Office Action, supplied the following additional allegation that parallels the Examiner's prior allegation of the previous paragraph in this Response: "The tubes 30 of Wolniak are joined to the holes 23 by way of the walls 11-12." Once again, this is a stretch to the imagination that is not disclosed by the Wolniak patent. The Wolniak patent simply does not disclose anything about the tubes 30 being "adjoined to the holes 23," either "by way of the walls 11-12," or otherwise. Instead, the Wolniak patent merely discloses positioning of an open end of the tubes 30 over the holes 23 to allow drainage of the tubes 30, but does not disclose any attachment mechanism for the tubes 30 to be joined to the walls 11, 12, as previously alleged by the Examiner.

Next, claim 30 of the above-identified application reads as follows:

> *30. An ice fishing rod storage apparatus, the apparatus comprising:*
> *a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity and ice fishing rods capable of being individually positioned within the elongate cavities of the different elongate shells;*
> *a first spacing component, the pair of elongate shells each secured by the first spacing component; and*
> *a second spacing component, at least one of the elongate shells secured by the second spacing component, the second spacing component spaced apart from the first spacing component.*

For reasons analogous to those provided above with regard to claim 10, the Wolniak patent does not in fact disclose anything about ice fishing rods being individually positionable within the tubes 30 of the Wolniak fishing tackle box, despite the Examiner's comments to the contrary. Indeed, as previously noted, the covers *20a* and *20b* would not allow storage of an ice fishing rod in the tubes 30, since the reel or line windup parts of the rods and handle portions of the rods opposite the tip of the rods would prevent the cover portions *20a* and *20b* of the Wolniak fishing tackle box from being closed. Therefore, the Wolniak patent does not disclose each and every feature required by claim 30 and consequently does not anticipate claim 30.

Next, claim 31 that depends from independent claim 30 reads as follows:

> *31. The ice fishing rod storage apparatus of claim 30 wherein the ice fishing rods are capable of being individually positioned within the elongate cavities of the different elongate shells with tips of the rods within the elongate cavities and with either the reels or line windups of the ice fishing rods or fishing line extending from the reels or line windups in contact with the elongate shells.*

For reasons analogous to those provided above with regard to claim 10, the Wolniak patent does not disclose the details required by claim 31 regarding the ability to position ice fishing rods in the tubes 30 in the manner defined in claim 31. Therefore, the Wolniak patent does not disclose each and every feature required by claim 31 and consequently does not anticipate claim 31.

Next, claims 32 and 33 read as follows:

> *32. An ice fishing tackle storage apparatus, the apparatus comprising:*
> *a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity and ice fishing tackle capable of being positioned within the elongate cavity of each elongate shell;*
> *a first spacing component, the pair of elongate shells each secured by the first spacing component; and*
> *a second spacing component, at least one of the elongate shells secured by the second spacing component, the second spacing component spaced apart from the first spacing component;*
> *wherein the ice fishing tackle storage apparatus is positioned in a container, the container having a wall, the wall*

comprising a one or more interior surfaces that define a recess in the wall or an aperture through the wall, the second spacing component comprising the recess or the aperture, one of the elongate shells passing through the aperture of the wall or positioned in the recess of the wall.

33. An ice fishing tackle storage apparatus, the apparatus comprising:
a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity and ice fishing tackle capable of being positioned within the elongate cavity of each elongate shell;
a first spacing component, the pair of elongate shells each secured by the first spacing component; and
a second spacing component, at least one of the elongate shells secured by the second spacing component, the second spacing component spaced apart from the first spacing component;
wherein the ice fishing tackle storage apparatus is positioned in a container, the container having a wall, the apparatus further comprising a socket, the socket attached to the wall of the container, and one of the elongate shells positioned in the socket.

For reasons analogous to those provided above with regard to claim 14, the Wolniak patent does not disclose the recess in the wall or the aperture through the wall that are required in the alternative by claim 32. Likewise, for reasons analogous to those provided above with regard to claim 15, the Wolniak patent does not disclose the socket details that are required by claim 33. Therefore, the Wolniak patent does not disclose each and every feature required by either claim 32 or claim 33 and consequently does not anticipate either claim 32 or claim 33.

Next, claim 34 reads as follows:

34. An ice fishing tackle storage system, the ice fishing tackle storage system comprising an ice fishing storage apparatus, the apparatus comprising:
a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity and ice fishing tackle capable

of being positioned within the elongate cavity of each elongate shell; and

a first spacing component, the pair of elongate shells each secured by the first spacing component; and

a first wall, the first wall attached to the first spacing component; and

a container, the ice fishing tackle storage apparatus positioned in the container, the container having a second wall, the first wall and the second wall defining a chamber within the container, an ice fishing tip-up capable of being placed in the chamber.

Thus, claim 34 requires that the ice fishing tackle storage system be positioned in a container, where the ice fishing tackle storage system comprises a first wall that is attached to the first spacing component and the container has a second wall, with the first and second walls defining a chamber within the container and an ice fishing tip-up capable of being placed in the chamber thereby defined. Wolniak patent does not disclose any such chamber or walls defining such a chamber. Instead, the tubes 30 and associated spacing components of the Wolniak tackle box prevent any such chamber from existing and thereby the Wolniak tackle box lacks any ability to position a tip-up within such a chamber, as required by claim 34. Therefore, the Wolniak patent does not disclose each and every feature required by claim 34 and consequently does not anticipate claim 15.

Next, claim 37 reads as follows:

37. An ice fishing tackle storage apparatus, the apparatus comprising:

a pair of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity and ice fishing tackle capable of being positioned within the elongate cavity of each elongate shell; the elongate shells each having both a distal end and a proximal end;

a first spacing component, the pair of elongate shells each secured by the first spacing component, the first spacing component having a distal surface and a proximal surface; and

a second spacing component, at least one of the elongate shells secured by the second spacing component, the

> *second spacing component spaced apart from the first spacing component;*
> *wherein the ice fishing tackle storage apparatus is positioned in a container, the container having a closed bottom end and an open upper end, the first spacing component positioned at the open upper end.*

Thus, claim 37 defines an ice fishing tackle storage apparatus, where the ice fishing tackle storage apparatus is "positioned in a container." Claim 37 further requires that the container have a closed bottom end. The Wolniak patent does not disclose such a container with a closed bottom end, since the Wolniak patent instead discloses holes 23 through the bottom of the Wolniak fishing tackle box. Therefore, the Wolniak patent does not disclose each and every feature required by claim 37 and does not anticipate claim 37.

Finally, claim 38 of the above-identified application that depends from claim 37 reads as follows:

> *38. The ice fishing tackle storage apparatus of claim 37, wherein the proximal end of at least one of the elongate shells is flush with the proximal surface of the first spacing component.*

Claim 38 thus requires that the proximal end of at least one of the elongate shells be flush with the proximal surface of the first spacing component. The Wolniak patent does not disclose this feature that is required by claim 38 since the Wolniak patent discloses that each and every one of the proximal end of the tubes 30 extend well above the uppermost spacing component of the Wolniak tackle box. Therefore, the Wolniak patent does not disclose each and every feature required by claim 38 and does not anticipate claim 38.

The Wolniak patent does not disclose each and every feature required by claims 10, 14, 15, 30-34, or 37-38. Therefore, the Wolniak patent does not anticipate any of claims 10, 14, 15, 30-34, or 37-38. Claims 10, 14, 15, 30-34, and 37-38 are therefore believed allowable. Likewise, claims 11-13 and 17-18 each depend from allowable claim 10 and are therefore also believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 10-15, 17-18, 30-34, and 37-38 under 35 U.S.C. §102(b) based upon the Wolniak patent and that claims 10-15, 17-18, 30-34, and 37-38 be allowed.

Claim Rejections Under 35 U.S.C. §102(b) Based Upon The McEwen Patent.

In the Office Action, the Examiner rejected claims 19, 21-23, 39, and 41 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,131,179 to McEwen (subsequently referred to "McEwen patent"). In support of this rejection, the Examiner alleged:

> The patent to McEwen shows an ice fishing tackle storage apparatus having a plurality of elongate shells 16 having an elongate interior cavity, a spacing structure 20, 20 secured to the shells and a plurality of legs 40, 42 attached to the shells. McEwen shows a container 10. McEwen shows the elongate shells capable of securing ice fishing tackle therein. The spacing structure 20, 20 is effective to maintain two or more of the elongate shells in predetermined relation with each other proximate the spacing structure. The elongate shells are capable of serving as legs that will stably support the apparatus on a surface when the two elongate shells are positioned in contact with the surface as shown in Fig. 8.

Despite the Examiner's comments, the McEwen patent does not disclose each and every feature required by claims 19, 21-23, 39, and 41. Consequently, the McEwen patent does not anticipate any of claims 19, 21-23, 39, or 41.

Claim 19 of the above-identified application reads as follows:

> *19. An ice fishing tackle storage apparatus, the apparatus comprising:*
>
> *a plurality of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity, and ice fishing tackle capable of being positioned within the elongate cavities of the elongate shells;*
>
> *a spacing structure, the elongate shells secured by the spacing structure,, the spacing structure effective to maintain two or more of the elongate shells in predetermined relation to each other, proximate the spacing structure; and*
>
> *wherein at least two of the elongate shells are capable of serving as legs that will stably support the apparatus on a surface when the at least two elongate shells are positioned in contact with the surface, the spacing structure effective to prevent slippage of the at least two elongate shells with respect to the spacing structure.*

Claim 19 thus requires a plurality of elongate shells that each have interior surfaces defining elongate cavities. Ice fishing tackle is capable of being positioned within the elongate cavities. A spacing structure is provided to secure two or more of the elongate shells in predetermined relation to each other, proximate the spacing structure. According to claim 19, "at least two of the elongate shells are capable of serving as legs that will stably support **the apparatus** on a surface when the at least two elongate shells are positioned in contact with the surface." (Emphasis added). Thus, at least two of the elongate shells are capable of serving as legs that will stably support the apparatus that includes the plurality of shells and the spacing structure.

With regard to the McEwen patent, the Examiner relies upon Figure 8 as allegedly disclosing elongate shells that "are capable of serving as legs that will stably support the apparatus on a surface when the two elongate shells are positioned in contact with the surface as shown in Fig. 8." While Figure 8 does show that a minor portion of the periphery of one end of one of the tubes 16 is in contact with the ground, this mere disclose of the contact between this minor portion of the tube 16 with the ground does not establish anything about the ability of the tube 16, in the combination disclosed in Figure 8, to stably support the entire apparatus that includes the McEwen apparatus (i.e.: the container 10, the legs 40, the tube 16, among other components).

Indeed, in relation to the disclosure in Figure 8, the McEwen patent discloses that the tubes 16, 18 by virtue of their minor contact with the ground, are not responsible for the stability of the McEwen apparatus. Instead, the McEwen patent discloses that the bucket 10 is filled with water. (Col. 4, lines 26-27). The McEwen patent discloses that this filling of the bucket with water is responsible for steadying the apparatus, including the tubes 16 and 18. (Col. 4, lines 42-44 and Figure 8). The McEwen patent discloses nothing whatsoever about the tubes 16, 18 supporting the overall apparatus. Indeed, the legs 40, 42 are explicitly added for purposes of supporting the tubes 16, 18. This further demonstrates the tubes 16, 18 do not support the overall apparatus of the McEwen patent, such as that disclosed in Figure 8. Mere contact of a minor portion of the tubes 16, 18 with the ground does not necessarily demonstrate support of the apparatus by the tubes 16, 18.

Nonetheless, despite the explicit disclosure in the McEwen patent that the filling of the bucket of water is responsible for steadying the apparatus, including the tubes 16 and 18, and the

foregoing comments of the prior three paragraphs that were submitted in response to the prior Office Action, the Examiner, in a prior Office Action, continued to make the groundless allegation that the minor portion of the tube 16 from Fig. 8 will stably support the overall apparatus:

> As to McEwen as shown in Fig. 8, the tube 16 has part of the bottom portion in contact with the ground and can hence are capable of serving as legs that will stably support the apparatus on a surface when the two elongate shells are positioned in contact with the surface.

Once again, this is merely a groundless allegation by the Examiner that is not supported in fact by the McEwen patent. Instead, the McEwen patent, among other things, discloses that filling of the bucket of water is responsible for steadying the apparatus, including the tubes 16 and 18. (Col. 4, lines 42-44 and Fig. 8). There is nothing whatsoever in the McEwen patent that would support the Examiner's allegation that the minor contact between the tubes 16, 18 and the ground surface would allow the tubes 16, 18 to stably support the overall McEwen apparatus. This is merely an allegation of the Examiner without any basis in fact.

Applicant also notes the Examiner characterizes the spacing structure of the McEwen patent as sleeves 20, 20. However, the spacing structure of the McEwen device instead includes every component shown in the figures, other than the tubes 16, 18. Absent these other components, including the handle 12, the nut and bolt arrangement 38, the bucket 10, the sleeve 30, 32, the elastic cords 34, 36, the sleeves 20, 22, the leg 40, 42, etc., the tubes would not be maintained in predetermined relation to each other and would not be prevented from slipping with respect to the spacing structure. All of the components beyond the tubes 16, 18 constitute the spacing structure, albeit a fairly complicated spacing structure, of the McEwen patent.

Thus, the legs 40, 42 in combination with the water placed in the bucket 10, are vitally necessary for support of the apparatus disclosed in the McEwen patent. (Col. 2, line 55, through Col. 3, line 5). Clearly, mere contact between a small part of the tube 16, 18 with the ground plays only a minor role and is insufficient to stably support the overall apparatus. Even absent this disclosed contact of the tubes 16, 18, the water in the bucket would clearly support the overall apparatus in stable fashion. Furthermore, absent the contact between the tube 16, 18 and the ground,

the remaining components of the apparatus in the McEwen patent, including the nut and bolt mechanism 38, would still constitute the support mechanism of the McEwen apparatus and would still maintain the tubes 16, 18 in stable fashion to support a fishing rod inserted within the tube 16, 18.

As explained above, the McEwen patent does not disclose each and every feature required by claim 19. Therefore, the McEwen patent does not disclose each and every feature required by claim 19 and consequently does not anticipate claim 19.

Claim 21 of the above-identified application depends from claim 19 and reads as follows:

> *21. The ice fishing tackle storage apparatus of claim 19 wherein the elongate shells each have a longitudinal axis, a length of at least one of the elongate shells selectively and reversibly adjustable along the longitudinal axis of the at least one elongate shell.*

Claim 21 thus requires that a length of at least one of the elongate shells originally defined in claim 19 be selectively and reversibly adjustable along the longitudinal axis of the at least one elongate shell. The McEwen patent does not disclose any ability to extend the length of either the tube 16 or the tube 18. The Examiner implicitly recognizes this, since the Examiner does not point to any aspect in the McEwen patent covering any such length adjustment ability. Thus, the McEwen patent does not disclose each and every feature that is required by claim 21 and consequently does not anticipate claim 21.

Claim 23 of the above-identified application reads as follows:

> *23. An ice fishing tackle storage apparatus, the apparatus comprising:*
>
> *a plurality of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity, and ice fishing tackle capable of being positioned within the elongate cavities of the elongate shells;*
>
> *a spacing structure, the elongate shells secured by the spacing structure, the spacing structure effective to maintain at least two of the elongate shells in predetermined relation to each other, proximate the spacing structure; and*

a plurality of legs that are capable of supporting the apparatus on a surface when the legs are positioned in contact with the surface, the plurality of legs attached to the spacing structure or to any of the elongate shells.

Claim 23 thus requires a plurality of legs that are capable of supporting the apparatus on a surface when the legs are positioned in contact with the surface, where the apparatus that is capable of being supported comprises the elongate shells and the spacing structure.

As indicated above, there is no disclosure in the McEwen apparatus about the legs 40, 42 or the tubes 16, 18 having the capability of supporting the overall apparatus (tubes and spacing structure) of the McEwen apparatus. Instead, as exemplified by the need to fill the bucket 10 with water, it is clear the bucket, as opposed to the legs 40, 42 or the tubes 20, supports the overall apparatus that includes the bucket 10. Absent the water in the bucket 10, the McEwen patent clearly indicates that insufficient stability would exist, even with the use of the legs 40, 42. Thus, the McEwen patent fails to disclose each and every feature that is required by claim 23 and consequently does not anticipate claim 23.

Claim 39 of the above-identified application reads as follows:

39. The ice fishing tackle storage apparatus of claim 19 wherein the spacing structure is free of contact with the surface.

Claim 39, in turn, depends from claim 19 that reads as follows:

19. An ice fishing tackle storage apparatus, the apparatus comprising:

a plurality of elongate shells, the elongate shells each having an interior surface that defines an elongate cavity, and ice fishing tackle capable of being positioned within the elongate cavities of the elongate shells;

a spacing structure, the elongate shells secured by the spacing structure,, the spacing structure effective to maintain two or more of the elongate shells in predetermined relation to each other, proximate the spacing structure; and

wherein at least two of the elongate shells are capable of serving as legs that will stably support the apparatus on a surface when the at least two elongate shells are

> *positioned in contact with the surface, the spacing structure effective to prevent slippage of the at least two elongate shells with respect to the spacing structure.*

As explained above in connection with the argument regarding the Examiner's rejection of claim 19 based upon the McEwen patent, the legs 40, 42 of the McEwen device constitute part of the spacing structure of the McEwen patent. Clearly, from Fig. 2 and Fig. 8 of the McEwen patent, the legs 40, 42, and thereby the spacing structure of the McEwen device, is in contact with the surface. Therefore, the McEwen patent does not disclose each and every detail that is required by claim 39 and consequently does not anticipate claim 39. Similar comments apply with regard to claim 41 that similarly specifies: "the spacing structure is free of contact with the surface." Therefore, the McEwen patent does not disclose each and every detail that is required by claim 41 and consequently does not anticipate claim 41.

As indicated above, the McEwen patent fails to disclose all of the features required by any of claims 19, 21, 23, 39, or 41. Claims 19, 21, 23, 39 and 41 are therefore believed allowable. Claim 22 depends from allowable claim 19 and is therefore also believed allowable. Consequently, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 19, 21-23, 39, and 41 under 35 U.S.C. §102(b) based upon the McEwen patent and that claims 19, 21-23, 39, and 41 be allowed.

Claim Rejections Under 35 U.S.C. §103(a) Based On The Thibodeaux And Morin Patents.

In the Office Action, the Examiner rejected claim 3 under 35 U.S.C. §103 as allegedly being unpatentable over the Thibodeaux patent as applied to claim 1, and further in view of U.S. Patent No. 4,311,262 to Morin (subsequently referred to as the "Morin patent"). In support of this rejection, the Examiner stated:

> The patent to Thibodeaux shows an ice fishing tackle storage device as discussed above and show one template which is the top surface. Morin shows an ice fishing tackle storage apparatus having a first 14 and second 24 template to hold rod 12. In reference to claim 3, it would have been obvious to employ a second template in Thibodeaux